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EXAMINER

MAI, HAO D

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 3-4, 9-11, and 14, are rejected under 35 U.S.C. 102(b) as being anticipated by Jung et al. (6254385 B1).**

Jung et al. disclose a method and device for determining a sample of a color coding ring (chart 404) closest to the color of at least a part of at least one element of a patient 402's set of teeth (Fig. 26), with the aid of imaging means comprising a video camera (abstract), the method and device comprising the steps of and/or means of: inputting and freezing on the screen 400 a color image of the patient 402's set of teeth element (Fig. 26; column 32 lines 37-39); filming the color coding ring (chart 404) and displaying on the screen the image of various sample colors; the image of the sample colors is shown to be lying side by side the frozen image of the patient's set of teeth without any separation (Fig. 26); and visually comparing the two images (Fig. 26; column 33 lines 54-65). The frozen image of the patient 402's set of teeth element can be acquired separately from the image sample (chart 404), i.e. the picture of the patient is taken separately from the chart 404; the two images - patient 402 and chart 404 - are then put next to each other on the computer screen as shown in Figure 26.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 2, 5-8, and 12-13, are rejected under 35 U.S.C. 103(a) as being unpatentable over Jung et al. (6254385 B1).**

Jung et al. disclose the invention substantially as claimed. However, Jung et al. are silent to the samples of the color coding ring/chart are made to advance on the screen (claim 2). Jung et al. are also silent to controlling or inhibit the automatic controlling of the chrominance and luminosity of the video camera (claims 5-8 and 12-13).

The claim sample-advancing technique is well known, e.g. Microsoft Word™ has a color chart for the users to select a color for the font, each color in the color chart can be advanced to be previewed for selection. It would have been obvious to one having ordinary skill in the art at the time the invention was made to advance the samples of the color coding chart so that each sample can be individually evaluated next to the patient's tooth. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Jung et al. by controlling or inhibiting the automatic control of the chrominance and/or luminosity of the video camera. Such control on the chrominance and/or luminosity of the video camera is merely a matter of choice well within the skill of an artisan obtained via routine experimentation in order to achieve an optimum match between the real object and the image of the object captured by the video camera.

Response to Arguments

5. Applicant's arguments regarding Jung failing to disclose "separate images 7a (teeth of patient) and 7b (sample)" have been fully considered but they are not persuasive. Firstly, note that the claims fail to recite the limitation "separate" images as argued. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Secondly, Figure 26 of Jung clearly shows on screen 400 two separate images: (1) color image of teeth of patient 402, and (2) image of at least one sample, i.e. chart 404.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAO D. MAI whose telephone number is (571)270-3002. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964.

Art Unit: 3732

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hao D Mai/
Examiner, Art Unit 3732

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732